

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

PROTECTMARRIAGE.COM, et al.,

Plaintiffs,

No. CIV S-09-0058 MCE DAD

v.

DEBRA BOWEN, et al.,

Defendants.

ORDER

This case came before the court on June 4, 2010, for hearing on the motion to compel filed on May 7, 2010, by defendants Debra Bowen and Edmund G. Brown, Jr. Sarah E. Troupis, Esq. appeared for plaintiffs. Erin V. Peth, Esq. appeared for moving defendants Bowen and Brown. Lawrence T. Woodlock, Esq. appeared for defendant members of the California Fair Political Practices Commission, and attorneys Jill Ellen Habig and Mollie Mindes Lee appeared for defendants Dennis J. Herrera and the Department of Elections for the City and County of San Francisco.

Upon consideration of the parties' briefing and their arguments in open court, and for the reasons stated on the record at the hearing, the court grants, in part, defendant Bowen and Brown's motion (Doc. No. 218) to compel further responses to defendants' first set of interrogatories and first set of requests for production of documents. On an on-going basis,

1 plaintiffs shall serve further responses to the discovery requests at issue, as agreed in court and
2 subject to the attached Stipulation of Parties Re: Evidence. Defendants' motion for discovery
3 sanctions and for costs and attorneys fees is denied.

4 IT IS SO ORDERED.

5 DATED: June 8, 2010.

6
7 
8 _____
9 DALE A. DROZD
10 UNITED STATES MAGISTRATE JUDGE

11 DAD:kw
12 Ddad1/orders.civil/protectmg0058.dmtc.oah..060410
13
14
15
16
17
18
19
20
21
22
23
24
25
26

1 DENNIS J. HERRERA, State Bar No. 139669
City Attorney
2 WAYNE SNODGRASS, State Bar No. 148137
JON GIVNER, State Bar No. 208000
3 ANDREW SHEN, State Bar No. 232499
MOLLIE LEE, State Bar No. 251404
4 Deputy City Attorneys
One Dr. Carlton B. Goodlett Place
5 City Hall, Room 234
San Francisco, California 94102-4682
6 Telephone: (415) 554-4705
Facsimile: (415) 554-4745
7 E-mail: mollie.lee@sfgov.org
*Attorneys for Defendants Department of Elections –
8 City and County of San Francisco and Dennis J.
Herrera, City Attorney for the City and County of
9 San Francisco*

10 *(Additional Counsel of Next Page)*

11 IN THE UNITED STATES DISTRICT COURT
12 FOR THE EASTERN DISTRICT OF CALIFORNIA

15
16 **PROTECTMARRIAGE.COM, et al.,**
17 Plaintiffs,
18 v.
19 **DEBRA BOWEN, SECRETARY OF**
STATE FOR THE STATE OF
20 **CALIFORNIA, et al.,**
21 Defendants.

2:09-cv-00058-MCE-DAD
**STIPULATION OF PARTIES RE:
EVIDENCE**

22
23
24
25
26
27
28

1 EDMUND G. BROWN JR.
Attorney General of California
2 JONATHAN K. RENNER, State Bar No. 187138
Senior Assistant Attorney General
3 STEPHEN P. ACQUISTO, State Bar No. 172527
Supervising Deputy Attorney General
4 ERIN V. PETH, State Bar No. 227850
Deputy Attorney General
5 1300 I Street, Suite 125
P.O. Box 944255
6 Sacramento, CA 94244-2550
Telephone: (916) 323-8230
7 Fax: (916) 324-8835
E-mail: Erin.Peth@doj.ca.gov
8 *Attorneys for Defendants Debra Bowen,*
California Secretary of State, and Edmund G. Brown Jr.,
9 *Attorney General of the State of California*

10 SCOTT HALLABRIN, State Bar No. 76662
General Counsel
11 LAWRENCE T. WOODLOCK, State Bar No. 137676
Fair Political Practices Commission
12 428 J Street, Suite 620
Sacramento, CA 95814
13 Telephone: (916) 322-5660
Fax: (916) 327-2026
14 E-mail: Lwoodlock@fppc.ca.gov
Counsel for Defendants Members of the Fair Political
15 *Practices Commission*

16
17
18
19
20
21
22
23
24
25
26
27
28

1 Plaintiffs' Third Amended Complaint alleges that that there is a reasonable probability that
2 compliance with the reporting and disclosure requirements of California's Political Reform Act of
3 1974, Cal. Gov't Code § 81000 et seq., will result in threats, harassment, and reprisals. Plaintiffs
4 hereby stipulate that in support of this claim, they will not rely upon or offer into evidence at any
5 stage of this litigation any evidence other than the following:

- 6 1) The 58 Doe declarations already submitted in this action in support of Plaintiffs'
7 motion for summary judgment.
- 8 2) Any Doe declarations alleging additional incidents of threats, harassment and
9 reprisals related to the declarant's support for Proposition 8 that Plaintiffs may
10 produce to Defendants before the close of non-expert discovery. Plaintiffs represent
11 that they currently are not aware of any individuals who intend to submit such
12 declarations.
- 13 3) Media reports about incidents of harassment for whatever evidentiary value they may
14 have. Plaintiffs will not rely upon or offer any additional evidence verifying or
15 corroborating the content of the media reports.
- 16 4) Testimony as to threats, harassment or reprisals directed at Brian Brown or Ron
17 Prentice personally. Specifically, Plaintiffs will limit this category of evidence to (a)
18 phone calls or voicemails left on Brown or Prentice's direct telephone lines, (b) e-
19 mails sent to their individual e-mail addresses, (c) letters addressed to them as
20 individuals, (d) in-person encounters in which Brown or Prentice personally
21 experienced threats, harassment or reprisals, (e) phone calls or e-mails to the National
22 Organization for Marriage ("NOM"), National Organization for Marriage – California
23 ("NOM-CA") or National Organization for Marriage – California PAC ("NOM-CA
24 PAC") referencing Brian Brown by name, and (f) phone calls or e-mails to
25 ProtectMarriage referencing Ron Prentice by name. It does not include phone calls,
26 e-mails, letters or any communication directed to NOM or its employees that does not
27 specifically reference Brian Brown by name. It also does not include phone calls, e-
28 mails, letters or any communication directed to ProtectMarriage or its employees that

1 does not specifically reference Ron Prentice by name. In the event that Defendants
2 depose any additional witnesses to testify about threats, harassment, or reprisals
3 personally directed at these witnesses, Plaintiffs reserve the right to present testimony
4 or evidence on that topic, subject to the conditions described above.

- 5 5) Plaintiffs' representations in Plaintiffs' Interrogatory Responses served on March 1,
6 2010 as to the number of persons from whom Plaintiffs have heard regarding
7 incidents of threats, harassment or reprisals. Plaintiffs will not rely upon or submit
8 any additional evidence further characterizing or elaborating upon these incidents.

9 Plaintiffs also stipulate to the authenticity of any documents created and distributed by
10 Plaintiffs and their affiliates and produced by Plaintiffs in this matter. This means any
11 documents: (a) on the letterhead of NOM, NOM-CA, NOM-CA PAC, or ProtectMarriage.com,
12 and (b) any e-mails sent to their mailing lists from any e-mail address at NOM, NOM-CA, NOM-
13 CA PAC, or ProtectMarriage.com. Plaintiffs stipulate that these documents were created by
14 Plaintiffs and disseminated by Plaintiffs to their mailing lists on the date shown on the document.

15 Plaintiffs stipulate that they will provide Defendants with the opportunity to conduct
16 additional discovery on the basis of any new Doe declarations or documents produced in this
17 matter.

18 Defendants relied upon this stipulation in conducting the depositions of Brian Brown and
19 Ron Prentice. Defendants do not agree that Plaintiffs have proven any facts regarding threats,
20 harassment and reprisals against supporters of Proposition 8 or traditional marriage, and do not
21 waive any objections or factual or legal arguments that may be relevant to this matter. This
22 stipulation does not release Plaintiffs of their obligations to disclose information pursuant to Rule
23 26 of the Rules of Federal Procedure, to respond to the continuing discovery requests served on
24 October 30, 2009, or any other obligation to disclose information to the parties or to the Court.

25 ///

26 ///

27 ///

28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Dated: May 29, 2010

Respectfully submitted,
DENNIS J. HERRERA
City Attorney
WAYNE SNODGRASS
JON GIVNER
ANDREW SHEN
Deputy City Attorneys

/s/ Signature on File

MOLLIE LEE
Deputy City Attorney
*Attorneys for Defendants Department of
Elections – City and County of San
Francisco and Dennis J. Herrera, City
Attorney for the City and County of San
Francisco*

Dated: May 29, 2010

/s/ Signature on File

SARAH E. TROUPIS
Bopp, Coleson & Bostrom
*Attorneys for Plaintiffs
ProtectMarriage.com, National Organization
for Marriage, and National Organization for
Marriage California PAC*

SA2009307359
10573151.doc